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Supreme Court of the United States

OCTOBER TERM, 1933.

No. 526

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM AND CHARLES HALLBOM,

Petitioners,

vs.

EDWARD PAGEL AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, JOHN G. MACLEAN AS ADMINISTRATOR OF THE ESTATE OF SELMA HALLBOM, LILLIE F. MCCRIMMON AS ADMINISTRATRIX OF THE ESTATE OF FRED R. HALLBOM, LILLIE F. MCCRIMMON AS GUARDIAN OF FRED R. HALLBOM, JR., ARLYENE, ALINDER AND LILLIAN GABRIELSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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Respondents.

PETITION FOR WRIT OF CERTIORARI.

Your petitioners respectfully show that they seek a review by this Court of the final judgment of the Supreme Court of Minnesota, the court of last resort of that state, affirming the judgment of the District Court of Kandiyohi county, Minnesota, which judgment affirmed an order of the Probate Court of Kandiyohi county, Minnesota, allowing the final account of the administrator of the estate of Jacob E. Hallbom, in which final account said administrator proposed to use the proceeds of War Risk Insurance on the life of said Jacob E. Hallbom to pay claims of creditors of the estate of Jacob E. Hallbom.

SUMMARY STATEMENT.

Jacob E. Hallbom, a world war veteran, held a $10,000.00 policy of war risk insurance, his father, Peter J. Hallbom, being the named beneficiary. Insured died October 20, 1925, survived by his said father, his mother, and certain brothers and sisters. The beneficiary received the usual monthly installments until he too died, February 22, 1928. The balance of the insurance was commuted into one lump sum of $9,116, which was paid to insured's administrator, Edward Pagel, one of the respondents herein.

In his final account, the administrator proposed to use a large part of this fund to pay the claims of creditors of insured's estate. The account was allowed by the Probate Court and Selma Hallbom, insured's mother, appealed to the District Court of Kandiyohi county, Minnesota. The District Court reversed the order of the Probate Court, holding: (1) the administrator was only a trustee of the funds; (2) the money was not subject to the claims of creditors; (3) that the Probate Court should ascertain to whom the money was to be paid; and (4) that the order of the Probate Court allowing the final account was reversed.

The administrator appealed to the Supreme Court of Minnesota from this judgment, and the Supreme Court of Minnesota affirmed the District Court, the opinion being found in 179 Minn. 402, 229 N. W. 344.

The administrator applied to this Court for and was granted a writ of certiorari to review the decision of the Supreme Court of Minnesota. Pending the appeal, Selma Hallbom died, and her administrator was substituted as respondent.

On April 13, 1931, this Court filed its opinion, 283 U. S. 266, 51 S. Ct. 416, vacating the opinion and judgment of the

Supreme Court of Minnesota, and remanding the cause for further proceedings not inconsistent with the suggestion therein made, that the brothers and sisters of decedent be made parties, and that the state court pass upon the question as to whether, under the provisions of the World War Veterans Act and of the certificate of insurance, the fund should now go to the estate of the mother, to the creditors of the insured, or to the surviving brothers and sisters.

On reconsideration, the Supreme Court of Minnesota filed its supplemental opinion found in 183 Minn. 429, 237 N. W. 21, remanding the case to the District Court for further proceedings not inconsistent with its supplemental opinion. This supplemental opinion is set forth in full in the record, page . . .

The District Court, hearing the case on a stipulated set of facts (R. 25), filed its judgment, entirely reversing its former position, holding: (1) that the commuted insurance was an asset of the estate of insured, becoming such immediately upon the death of the beneficiary; (2) that said commuted insurance as an asset of the estate was subject to the claims of creditors of the insured; (3) that after payment of expenses of administration and claims of creditors, the balance, if any, should be distributed to the heirs of Jacob E. Hallbom in accordance with the intestacy laws of the state of Minnesota, such heirs to be determined as of the date of the death of Jacob E. Hallbom; and (4) affirming the order of the Probate Court allowing the final account of the administrator.

The surviving brother and sisters of insured, now parties to the action by way of interpleader, and the administrator of the estate of Selma Hallbom filed separate appeals from this judgment, the appeals being consolidated.

The Supreme Court of Minnesota, on July 11th, 1933, filed

its judgment affirming the decision of the District Court of Kandiyohi county, the decision being set forth in the record, page ...., the opinion being reported in ... Minn. ..., 249 N. W. 417.

It is this judgment which is sought to be reviewed here.

The only question involved is whether a war risk insurance estate is subject to the claims of creditors of insured after death of the insured and the named beneficiary.

REASONS RELIED ON FOR THE WRIT.

Importance of the Question Involved.

This particular question is of wide importance. There are a constantly increasing number of war risk insurance estates, the distribution of which will be materially affected by the determination of this question. The question is primarily the construction of a federal statute, and the state courts having reached contradictory results, an authoritative determination by this Court is highly desirable.

Federal Law Erroneously Construed by State Court.

The Supreme Court of the state of Minnesota, in the case at bar, has erroneously construed the provisions of the federal statutes known as the World War Veterans' Act, and has erroneously denied certain rights, privileges, and immunities claimed under the provisions of that Act.

Conflict of Decisions.

The decision of the Supreme Court of the state of Minnesota, in the case at bar, in holding such a fund subject to the claims of creditors, is contrary to and in conflict with a

number of decisions of the courts of last resort of other states, such as:

Mixon vs. Mixon (N. Car.), 166 S. E. 516.

Mason's Admr. vs. Mason's Gdn., 239 Ky. 208, 39 S. W. (2d) 211.

Hunt vs. Slagle, 165 S. E. 287.

Butler vs. Cantley, 47 S. W. (2d) 258.

Perrydore vs. Hester, 215 Ala. 268, 110 So. 403.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the state of Minnesota, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket Nos. 29456-29463, *In re Estate of Jacob E. Hallbom*, decedent, and that said decree of the Supreme Court of the state of Minnesota may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and equitable; and your petitioners will ever pray, etc.

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM AND CHARLES HALLBOM,
Petitioners.

By L. D. BARNARD,
Counsel for Petitioners.

GEO. L. BARNARD,
Of Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION.

OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of the state of Minnesota is reported in Northwestern Reporter as: *In re Hallbom's Estate, Pagel vs. MacLean, et al. (McCrimmon, et al., Intervenors)*, 249 N. W. 417, and is set forth in full in the record at page ....

JURISDICTION.

The appellate and supervisory jurisdiction of the Supreme Court of the United States is invoked under Section 237, Judicial Code of the United States (28 U. S. C. A., Sec. 344), to correct error of the Supreme Court of the state of Minnesota, the court of last resort of that state, in the case cited in the last preceding paragraph.

The date of the judgment to be reviewed is July 11, 1933.

The case at bar comes within the appellate jurisdiction of this Court, under Section 237 of the Judicial Code by reason of the facts stated in the petition, not repeated here for brevity. The nature of the case, and the judgment of the court below, bring the case within the jurisdictional provision relied on because there is called into question the provisions of 38 U. S. C. A. 454, and the rights, privileges and immunities claimed by petitioners under that statute, and under the contract of insurance entered into between insured and the United States pursuant to the applicable federal statutes. The judgment of the Supreme Court of Minnesota denies the rights, privileges and immunities asserted by petitioners under the statute and under the contract of insur-

ance, namely that the insurance fund in question is not subject to the claims of insured's creditors.

Cases believed to sustain the jurisdiction are:

Singleton vs. Cheek, 284 U. S. 492.

Pagel vs. MacLean, 283 U. S. 266.

STATEMENT OF THE CASE

A statement of the facts involved is set forth in the petition, and a more detailed statement is found in the stipulation of facts in the record, page 25, and will not be repeated here in the interests of brevity.

SPECIFICATIONS OF ERROR.

1. The Supreme Court of the state of Minnesota erred in affirming the judgment of the District Court of Kandiyohi county, Minnesota.

2. The Supreme Court of the state of Minnesota erred in finding and holding that the fund in question is not exempt from the claims of creditors of insured's estate.

3. The Supreme Court of the state of Minnesota erred in finding and holding that the exemption of the fund in question, created by 38 U. S. C. A. 454, does not survive both insured and beneficiary for the benefit of the heirs of the insured.

4. The Supreme Court of Minnesota erred in finding that the issues of this case as to this question were not made *res judicata* by the decision of the court in 183 Minn. 429.

ARGUMENT.

War Risk Insurance Estates Are Not Subject to the Claims of Creditors of Insured's Estate.

It is provided by 38 U. S. C. A. 454 as follows:

> The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation.

The certificate of insurance contains this provision on the back of the certificate:

> The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable, and is not subject to the claims of creditors of insured or of the beneficiary.

The above quoted exemption statute was a part of the original War Risk Insurance Act, and has been incorporated unchanged in all amendments, and is a part of the law today.

Originally, under the regulations adopted by the War Risk Insurance Bureau pursuant to the authority and provisions of the statutes, the Bureau itself undertook to determine the distributees after the death of the named beneficiary. Bulletin No. 1, page 4, issued by the Bureau October 15, 1917, provides in part:

> If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any above designated beneficiaries are to become disqualified or does not survive the insured, the insurance (or if any above designated beneficiary shall survive the insured, but shall

> not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's last place of residence be entitled to his personal property in case of intestacy.

As far as is material here, there appears no great change in the law or in the practice as to distribution until the Act of March 4, 1925, which provides in part:

> If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable. * * *
>
> * * * In cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation.

The primary issue in this case is whether this slight amendment subjected the insurance fund to the claims of creditors of insured's estate, although other portions of the same Act provide that the fund shall not be subject to the claims of creditors.

It is the contention of petitioners that this change in the law makes the fund a part of the estate of the insured merely for the purposes of distribution to the proper parties, and that it in no way affects the status of the exemption.

In determining this question, it would seem that the primary object of Congress in creating War Risk Insurance should be kept in mind, and that the provisions of the contract of insurance and the law as a whole should be considered.

Before the adoption of the amendment, such exemption from the claims of creditors existed without question. If, as will hereafter be shown, Congress merely intended to correct certain administrative provisions of the law by this amendment, such a vital change as to wipe out the exemption should not be added by implication. Every attempt should be made to reconcile this amendment with the other provisions of the law.

The intention of Congress becomes plain by resort to the Congressional Records of the 68th Congress, Second Session. It appears that this amendment was passed without being read in the Senate, because the Senate was pressed for time. Senator Reed of Pennsylvania, a member of the committee having charge of the bill made an oral report to avoid taking the time necessary for reading the bill, and the Senate passed the bill relying on this report.

The following occurred, as appears from the Congressional Records of the 68th Congress, 2nd Session, Vol. 66, Pt. 5:

> Senator Reed: Mr. President, I ask unanimous consent for the immediate consideration of the bill (H. R. 12308) to amend the World War Veterans' Act and to add penalties for fraudulent misrepresentations in applications for the bonus. It adds nothing to the cost to the United States. It merely corrects a few inaccuracies that have been found to exist in the system adopted in the code last spring. (P. 5261).
>
> Senator Robinson said: The action of the committee in striking out that provision is not intended to deter-

mine the matter finally, but merely to hold it in suspension until it can be studied more carefully.

Senator Reed said: That is exactly the situation. The House has had three months' work on this particular bill and dropped it into our laps in the last week of the session, and we do not want to take the responsibility of passing on matters of substance at this late date, all we want to do is to correct the administrative irregularities. (P. 5261).

Senator Reed said a little later: If the Senator will permit me, I think I can present an explanation in less than 10 minutes. * * * Next is a section found on page 16, which allowed the Veterans' Bureau to pay directly to creditors of persons entitled, any compensation or amount due under $500.00. We struck it out because that would make the Veterans' Bureau practically a Probate Court and we thought that they ought not to have to do that work. (P. 5262).

Senator Walsh of Massachusetts, a member of the committee, said: Mr. President, supplementing what the Senator from Pennsylvania has said, I want to say that there are comparatively few changes in these amendments from the present law. We were very careful to omit those provisions of the House bill which seem to change the present law *so far as it applies to benefits.* We felt that at this late hour in the session *it would not be fair to make any substantial changes in existing law.* (P. 5264).

After the bill was returned to the House with the Senate changes thereon, Mr. Johnson of South Dakota, a member of the committee of the House in charge of the bill, responded to a question as to what was left of the bill as follows:

> There are some administrative provisions that will perhaps be of some benefit like the interpleader in reference to the payment of insurance. There are some other elements of the bill that will be of benefit to the men who have been guilty of what is known as wilful misconduct, but outside of those matters I think there is nothing.

From the foregoing, it is apparent that Congress merely intended to make administrative changes, by the amendment. It is also apparent that the particular change in question was intended only to obviate the difficulty of ascertaining and making payments to the proper persons by the Veterans' Bureau.

It may be noted, that since the amendment, the Veterans' Bureau has commuted the payments remaining after the designated beneficiary's death, and paid same into the estate of the insured, regardless of whether the insured died before or after the amendment.

The effect of the amendment has been before the courts in a number of cases, and in general, the courts have held in line with the construction contended for by petitioners.

Reivich vs. United States, et al., C. C. A., 25 Fed. (2d) 670.

Perrydore vs. Hester, 215 Ala. 268, 110 So. 403.

Mixon, et al., vs. Mixon, 166 S. E. 516.

Hunt, et al., vs. Slagle, 165 S. E. 287.

Sponberg vs. Lidstrom, et al., 245 N. W. 636.

Mason's Admr. vs. Mason's Gdn., 239 Ky. 208, 39 S. W. (2d) 211.

Butler vs. Cantley, 47 S. W. (2d) 258.

In *Reivich vs. United States, et al., supra*, decided after the amendment of 1925, it appears that the insured died in

1918 and the beneficiary under his will died in June, 1924. Insured's brother was advised by the Veterans' Bureau that under the laws of Iowa he was entitled to the remaining installments, and in 1925, he was further advised that "owing to the provisions of Sec. 303 of the Veterans' Act, as amended March 4, 1925 (38 U. S. C. A. 514), the remaining payments should be commuted and paid to the estate of insured." In the course of the court's opinion, the court said:

> with reference to the claim involved (the administrator was) not an administrator in the ordinary sense, but only a trustee for himself as an individual—and a naked trustee at that. Reivich, as administrator, would hold whatever he received in this case merely for the purpose of paying it over to himself, and neither the creditors of the deceased nor next of kin nor, we presume, the state, has any interest whatsoever.

In *Perrydore vs. Hester*, 215 Ala. 268, 110 So. 403, the court had particularly to construe the effect of the amendment. The court said:

> The Act of March 4, 1925, provides that in the instant circumstances the fund shall be paid in lump to the "estate of the insured." 43 Stat. 1310, Sec. 14; U. S. Comp. Stat. 1925, Sup. Sec. 9127½-303. This provision is to be construed in connection with others still remaining in the statutes unrepealed; among these, the general provision is to be construed in connection with others still remaining in the statutes unrepealed; among these, the general provision of the Act of June 7, 1924, that the repeal of certain statutes in the compilation made by that Act shall not affect any right or liability already accrued. 43 Stat. 630, Sec. 602 (U. S. Comp. St., Sec. 9127½-602).

With reference to claims already accrued as here, the Act of March 4, 1925, we think, is to be considered administrative in character.

To relieve the Veterans' Bureau of the task of ascertaining the persons entitled to take in case of intestacy under the laws of the various states, and maybe foreign countries, the fund is paid to the personal representative of the estate, to be distributed by the local jurisdiction, but in accordance to law. An analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive and pass on the funds to those entitled free from the debts of the decedent.

It is not intended to intimate a different view in case of death of the insured after the Act of March 4, 1925. After the soldier has carried his insurance for years, and under law made conditions that the benefit shall go to his widow and orphan without designating them beneficiaries, it will not be assumed that Congress intended such a change as would put on the soldier the active duty to name them beneficiaries without very clear and express provisions to that end.

In the recent case of *Mixon vs. Mixon* (No. Car.), 166 S. E. 516, the court said:

Therefore, nothing else appearing, the proceeds of the war risk insurance, when paid by the federal government to "the estate of the insured," would become a general asset of the estate and subject to the claims of creditors. However, the Congress of the United States had a different view, and expressed the intention of the lawmakers in the form of a statute, which is Section 454, Title 38 U. S. C. A. This statute provides that

"the insurance * * * payable under Parts II, III and IV, respectively, * * * shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; * * * such * * * insurance * * * shall be subject to any claims which the United States may have * * * against the person on whose account the * * * is payable." Manifestly, this statute was designed to relieve the "estate of the insured" from liability for debts of the deceased soldier. See *Funk vs. Luithle*, 58 N. D. 416, 226 N. W. 595, 597; and *Whaley vs. Jones*, 152 S. C. 328, 149 S. E. 841.

Conceding that the proceeds of war risk insurance are exempt from the claims of creditors of the insured, is such fund exempt from the claims of creditors of the distributee or distributees of such fund under the intestate laws of this state?

An examination of the World War Veterans' Act and the amendments thereto will perhaps disclose that the original idea of this beneficient legislation was to provide for American soldiers and their dependents. Hence a permitted class of beneficiaries was named in the early statutes, including the closest kin of the soldier, thus confirming the view that war risk insurance, as originally conceived, was a sort of special fund to stand guard about the family of the soldier who was offering his blood upon the altar of his country. The same idea is expressed in our statute, C. S. Sec. 160, which exempts the proceeds of recovery for wrongful death from the claims of creditors. Moreover, Section 454, Title 38, U. S. C. A., is broad and comprehensive, and should doubtless be given a liberal construction in furtherance of the prevailing idea of exemption from the claims of

creditors. Furthermore, in the case at bar, the original fund or the "insurance" referred to in said Section 454, is now in the hands of the administrator. No distributee of the estate of the dead soldier has received a penny of it under the intestate laws. The entire fund is now war risk insurance in the hands of his administrator, and the exemption created by the federal statute, from the claims of creditors, still rests upon it.

In the recent case of *Hunt vs. Slagle*, 165 S. E. 287, the Court of Appeals of Georgia said:

> It follows that the proceeds of this insurance belonging to the brother of the deceased insured soldier in the hands of the administratrix of his estate was not subject to the process of garnishment issued upon a judgment obtained against his brother and that the trial court erred in rendering judgment finding said funds subject thereto.

In the recent case of *Sponberg vs. Lidstrom*, 245 N. W. 636, the Minnesota Supreme Court, considering a different, although somewhat related problem, said:

> Although, by the Act of March 4, 1925 (38 U. S. C. A. Sec. 514), the commuted amount due on the death of the designated beneficiary is payable to the estate of the insured, it bears the earmarks of an insurance fund going to the dependents of the insured under the intestacy laws of the state or his will, *free of the claims of his creditors.*

The same statute making the fund exempt from the claims of creditors also states that the fund is to be "exempt from all taxation." There is, of course, no logical distinction between subjecting such a fund to taxation and subjecting

it to the claims of creditors. The same statute is involved in both instances.

A number of cases involving the question of imposition of inheritance taxes have been before the courts, and quite uniformly they have held these funds exempt from such taxes.

In a number of these cases, the nature of the war risk insurance law, its purposes, the intentions of Congress, and the construction of the 1925 amendment, have been fully discussed.

In re Harris' Estate, 179 Minn. 450, 229 N. W. 781.
Tax Comm. vs. Rife, 119 Ohio St. 83, 162 N. E. 390.
In re Cross' Estate, 152 Wash. 459, 278 Pac. 414.
Wanzel's Estate, 295 Pa. 419, 145 A. 512.
Watkins vs. Hall, 107 W. Va. 202, 147 S. E. 876.
Succession of Geier, 155 La. 167, 99 So. 26, 32 A. L. R. 353.

We quote briefly from some of these cases.

In *Tax Comm. vs. Rife, supra*, the court said:

> It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the Government, to relieve the Government of the necessity of selecting and determining the next of kin to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the Government to make the payments to the persons entitled to the same under the provisions of the federal law. *The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance.*

> Congress has a right to adopt the course of descent prevailing in the state of residence of the soldier, and the proceeds of the insurance therefore pass under the federal act, the intestate laws of Ohio being adopted as a standard or guide for ascertaining the next of kin to whom payment shall be made. * * *
>
> However, the proceeds of war risk insurance are a definite kind of property, differing from the ordinary property of a soldier's estate, and are in the nature of a beneficience or gratuity, bounty or pension, affecting the rights of the soldier and his dependents, upon one side, and the Government of the United States, as a part of its war policy, upon the other side. This distinct class of property, by federal enactment is not subject to the claims of creditors, or taxation, and is solely for the benefit of the soldier and his dependents and next of kin.

In *Succession of Geier*, 155 La. 167, 99 So. 26, 32 A. L. R. 353, the court said:

> The terms of the act are clear and unambiguous. Summarizing its provisions, there is a positive prohibition against all taxation on money paid out by the federal government under Section 28, Arts. 2, 3 and 4; and the insurance provision thereof is a contract between the United States, its agents, and the persons designated in the act as the beneficiaries of deceased service men. It is a bar to all state legislation which is in conflict with it.

The Supreme Court of Minnesota recently said, in the case of *In re Harris' Estate*, 179 Minn. 450, 229 N. W. 781, following its previous decision in the instant case:

> There (referring to the Hallbom case) the precise is-

> sue was whether the insurance money paid to the administrator was subject to the debts of the deceased. This court followed the Ohio, Pennsylvania, and other courts, holding that these insurance payments do not become a part of the estate of a deceased soldier or of his beneficiary; that they do not pass by the intestate laws of this state but go to the next of kin within the designated class by virtue of the contract and federal law; that the administrator is but a conduit or trustee designated to transfer the fund to those entitled thereto; that the Probate Court is appointed to determine who within the permitted class are next of kin and entitled to the fund; and that this is only a matter of procedure for the convenience of the federal government in disbursing the money.

As all of the cited cases follow nearly the same line of reasoning, in the interests of brevity, we will not discuss them further.

It is apparent from the decision of the court in the instant case, that the court took the position that all of these cases are overruled by the opinion of this Court in the case of *Singleton vs. Cheek,* decided on Feb. 5, 1932, 284 U. S. 492, 52 S. Ct. 257. In the cases of *Mixon vs. Mixon,* 166 S. E. 516, *Hunt vs. Slagle,* 165 S. E. 287, and *Sponberg vs. Lidstrom,* 245 N. W. 636, the courts either discussed the Singleton case or very plainly had it in mind. We have already cited and quoted from these cases, and do not repeat here.

It is sufficient to say that the court erroneously construes the effect of the Singleton case. In respect to the question as to the time as of which the heirs are to be determined (date of death of insured or beneficiary) the Singleton case does overrule the former decision of the Minnesota Supreme

Court in the instant case, and in this respect certain other cases which we have cited are also overruled. But we respectfully submit, that the determination of this question is the utmost limit that can be given the Singleton case. The question of exemption of the fund from claims of creditors was not in any way involved. True, the court does say that under the amendment of 1925, "the rule, which, upon the happening of the contingencies named in the prior acts, limited the benefit of the unpaid installments to persons within the designated class of permittees, was abandoned, and 'the estate of the insured' was wholly substituted as the payee. All installments, whether accruing before the death of the insured or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured as of the instant of his death, *to be distributed to the heirs of the insured* in accordance with the intestacy laws of the state of his residence * * *." We respectfully submit that there is nothing in this language which would abrogate the effect of the exemption statute. In fact, the italicized portion would seem to indicate that the fund is paid to the estate of the insured for one special purpose—to be paid to his proper heirs. The protection of the exemption statute still remains. We do not feel that this Court, in the Singleton case, where the question was not even indirectly involved, undertook to pass upon the effect of the amendment as it affects the exemption law.

In fact, just as the Minnesota Supreme Court said in *Sponberg vs. Lidstrom*, 245 N. W. 636, with the Singleton case fully in mind:

> Although by the Act of March 4, 1925 (38 U. S. C. A., 514), the commuted amount due on the death of the

> designated beneficiary is payable to the estate of the insured, it bears the earmarks of an insurance fund going to the dependents of the insured under the intestacy law of the state or his will, free of the claims of his creditors.

There is nothing in such a construction in any way in conflict with *Singleton vs. Cheek*.

It may be said that petitioners are not directly dependents of the insured in this case. However that may be, the rule cannot be different on this account. Consider the case of an insured leaving a widow and children, with the widow as the named beneficiary. It could never have been the intention of Congress that the creditors of the insured, after the death of the widow, were to have the insurance before his minor dependent children. Or consider the case of a dependent father and mother, with either as the named beneficiary. Can it be said that the creditors should have this fund before the survivor?

Carrying these illustrations a bit farther, let us suppose that in either case the insured died prior to the enactment of the amendment, the named beneficiary after. Then we would have the peculiar situation where at the time of his death the soldier would know that his insurance would go to protect the named beneficiary until his or her death, and then to his next dependents in the order of descent under the intestacy laws, but, because of this slight change in the laws, enacted after his death, the creditors would be preferred to his dependents. Such a construction is clearly in violent conflict with the expressed purpose of the law "to give to every commissioned officer and enlisted man greater protection for themselves and their dependents," and is clearly against the intentions of Congress. Yet such must be the

construction placed upon the law if the decision of the Minnesota Supreme Court is to be sustained.

It is necessary to consider not only the amendment of 1925, but the entire statute, the intention of Congress, and the other elements involved to arrive at the right conclusion. As was said in *Caha vs. United States*, 152 U. S. 211, 14 Sup. Ct. 513: "In arriving at a proper decision, this court may therefore turn for assistance, not only to the certificate of insurance, but also to the application for insurance, and the rules and regulations of the department, as well as the act itself * * *."

When this is done, it is clear that the protection of the federal exemption statute rests upon this fund, not only before the death of the beneficiary, but until it is entirely distributed to its rightful distributees.

THE QUESTION AS TO CLAIMS OF CREDITORS WAS RES JUDICATA IN THIS CASE, AND THE COURT ERRED IN ATTEMPTING TO RECONSIDER IT.

When this case was remanded by this Court to the Supreme Court of Minnesota for further proceedings, this question was expressly left open. This Court said:

> By reason of her decease, the question whether the mother alone of the permitted class is entitled to receive the proceeds of the insurance, in preference to the creditors of the insured, presented by the record and decided by the state court, has now become subsidiary to other questions, the determination of which is necessary to the disposition of the present suit and may render unnecessary any adjudication of the rights of the mother. Assuming, as the state court held, that the mother was entitled to the insurance in her lifetime, it does not fol-

low that respondent, by virtue of his office as administrator, or claiming in the mother's right, is entitled to payment of the insurance under the judgment in her favor. That depends on the construction of page 300, directing that the insurance "shall be payable only" to members of the permitted class, and on the question whether, under the provisions of the act and of the certificate, the insurance should now go to the estate of the mother, to the creditors of the insured, or to the surviving brothers and sisters, if any, none of whom is a party to this suit.

The question thus being left open, the Minnesota Supreme Court then proceeded to determine it. In its supplemental opinion, filed May 29, 1931, after the remand, the court said, after quoting the opinion of this Court as above:

> Upon reconsideration we adhere to and reaffirm our prior holding so far as the questions contained therein may be important or applicable; but we remand the cause to the trial court with the suggestion that the brothers and sisters of the soldier, if any, be made parties, and that the court pass upon the question as to whether such brothers and sisters or the administrator of the mother's estate are now entitled to the money involved.

The court not only expressly reaffirmed its former decision on this question of claims of creditors (it being the only other question important or applicable) but expressly limited the trial court to the determination of a specific question.

This decision, found in 183 Minn. 429, 237 N. W. 21, was not appealed from in any way. It became a final judgment accordingly. By it, everything held by the court in its

former opinion in 179 Minn. 402, in so far as applicable became the law of the case.

It was not, as contended by respondents before the Supreme Court of Minnesota, the judgment of an intermediate appellate court, because it became final upon a question specifically submitted to it.

The case of *American Surety Company vs. Baldwin* (U. S.), 77 L. Ed. 125, seems to be very clearly in point and quite conclusive. The judgment of the court as reported in 183 Minn. 429 became final and binding, not only upon the District Court but upon the Supreme Court of Minnesota as well. The question should not have been again considered.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory power in order that the decision of the Minnesota Supreme Court may be made to conform to the decisions herein quoted and in order that your decision in this case may become a guide for the Supreme Courts of all the states in the United States and thereby establish uniformity of decisions throughout the United States on the point and question involved, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of the state of Minnesota and finally reverse it.

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